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Attorneys for Defendants
REVEAL FROM THE CENTER FOR INVESTIGATIVE
REPORTING; MATT SMITH; and AMY WALTERS

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PLANET AID, INC., and LISBETH
THOMSEN,

Plaintiffs,

v.

REVEAL, CENTER FOR INVESTIGATIVE
REPORTING, MATT SMITH, and AMY
WALTERS,

Defendants.

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Case No. 3:17-cv-03695-MMC

**JOINT CASE MANAGEMENT
STATEMENT**

Judge: Hon. Maxine M. Chesney

Date: November 1, 2019

Time: 10:30 a.m.

Location: San Francisco Courthouse
Courtroom 7 – 19th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

1 Per the Court's August 9, 2019 order continuing the August 23, 2019 Case Management
2 Conference to November 1, 2019, and ordering the parties to file a Joint Case Management Statement by
3 October 25, 2019, the parties respectfully submit this Joint Case Management Statement.

4 As the Court is aware, Judge Kim oversees settlement in this case, and Judge Corley oversees
5 discovery disputes. As to settlement, the parties conferred informally throughout Summer 2019, and
6 convened formally before Judge Kim on September 6, 2019, for a settlement conference following this
7 Court's hearing on Plaintiffs' Motion for Clarification. Dkts. 226–27. As of September 30, 2019, the
8 parties have been unable to agree to settlement terms, and have not discussed settlement further.

9 Since September 30, the parties have resumed discussions concerning discovery, in anticipation
10 of working toward Plaintiffs filing an opposition to Defendants' pending anti-SLAPP motion (Dkt. 107),
11 briefing for which remains stayed subject to the parties' resolution of their discovery disputes (Dkt.
12 142). The parties have submitted several disputes in writing to Judge Corley for resolution.

13 Plaintiffs wish to raise only one issue with the Court. Plaintiffs previously raised the issue of
14 their inability to depose (or even contact) individuals listed on Defendants' initial disclosures pursuant to
15 Fed.R.Civ.P. 26(a) because those individuals either refused to participate in discovery and/or letters
16 rogatory could not issue given the lack of contact information in Defendants' initial disclosures. The
17 Court denied Plaintiffs' request to exclude witnesses at trial or in connection with the pending anti-
18 SLAPP motion as being premature given the stage of discovery when this issue was raised. We would
19 like to update the Court on this issue.

20 As far as the Defendants' suggested approach of initially briefing only the issue of whether either
21 Plaintiff is a public figure, discussed below, we believe that delaying the case to brief a non-dispositive
22 motion would be a recipe for delay. In a nutshell, no matter how the Court rules on the issue of
23 Plaintiffs' status as public figures, it will not end the case, and the parties will still need to continue with
24 the anti-SLAPP motion. By contrast, declining to proceed on a bifurcated basis will possibly conserve
25 judicial resources as the Court may not even need to reach the issue of whether either Plaintiff is a
26 public figure if it finds that the showing made by Plaintiffs is sufficient to establish a prima facie case
27 under a malice standard. As far as the remaining two issues discussed by Defendants below, it is our
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1 understanding that Defendants have asked Magistrate Judge Corley to address those issues. To the
2 extent that Defendants nevertheless wish to raise those issues at the CMC on November 1, 2019, we will
3 be prepared to do so.

4 For themselves, Defendants have asked for Court intervention regarding three proposals they
5 have made to focus discovery and this litigation more generally. First, the Court has previously
6 proposed that the parties engage on the narrow topic of whether Plaintiffs are limited-purpose public
7 figures, which will settle the dispute over whether Plaintiffs must prove Defendants' allegedly
8 actionable statements were made with malice if Plaintiffs are limited-purpose public figures, or
9 negligence if they are not. *See* Jan. 18, 2019 Hr'g Tr. at 33:1-4. Defendants have asked that the Court
10 order narrowed, phased discovery and cross-motions for summary judgment on the public figure issue.
11 Second, Defendants have asked that the Court order Plaintiffs to formalize their position that this case
12 only concerns statements referring to or regarding the USDA, in order to ensure that discovery and
13 litigation proceed with appropriate guardrails as to what claims are at issue. Third, Defendants have
14 asked that the Court compel Planet Aid to clarify its relationship with DAPP Malawi, both for discovery
15 purposes and in this litigation more generally, so that DAPP Malawi's role in resolving Plaintiffs' claims
16 and Defendants' defenses is clear.

17 Finally, Defendants would like to raise the issue of Ms. Ester Neltrup's death. Ms. Neltrup was
18 the co-founder and President of Planet Aid. She was disclosed in Plaintiffs' initial disclosures and
19 Defendants requested to depose her in May 2019. Defendants learned recently, independently
20 communications with Plaintiffs, that Ms. Neltrup passed away in July. Plaintiffs did not confirm Ms.
21 Neltrup's death until October 2019, though they knew of her death by July 2019. Defendants are
22 concerned about Ms. Neltrup's unavailability, the lack of prior representations as to the potential of her
23 unavailability, and the preservation of any of her records relevant to this matter.

1 DATED: October 25, 2019

Respectfully submitted,

2 COVINGTON & BURLING LLP
3 SIMON J. FRANKEL
4 ALEXA HANSEN
5 ETHAN FORREST
6 ABIGAIL P. BARNES
7 SARI REGINA MAZZURCO
8 SEAN HOWELL

9 By: /s/Ethan Forrest
10 Ethan Forrest

11 Attorney for Defendants
12 REVEAL FROM THE CENTER FOR
13 INVESTIGATIVE REPORTING; MATT SMITH;
14 and AMY WALTERS

15 DATED: October 25, 2019

Respectfully submitted,

16 NELSON MULLINS RILEY &
17 SCARBOROUGH LLP
18 SAMUEL ROSENTHAL

19 By: /s/Samuel Rosenthal
20 Samuel Rosenthal

21 Attorney for Plaintiffs
22 PLANET AID, INC. and LISBETH THOMSEN
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ECF CERTIFICATION

I, Ethan Forrest, am the ECF User whose identification and password are being used to file this JOINT STIPULATION AND [PROPOSED] ORDER CONTINUING CASE MANAGEMENT CONFERENCE. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that Plaintiffs' counsel Samuel Rosenthal has concurred in this filing.

DATED: October 25, 2019

COVINGTON & BURLING LLP

By: /s/Ethan Forrest
Ethan Forrest